

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-085

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Special Contract with Merrimack Village District

Post-Prehearing Conference Order

O R D E R N O. 26,802

April 17, 2023

In this proceeding, Pennichuck Water Works, Inc. (PWW) seeks approval of a special contract with Merrimack Village District (MVD) for the wholesale supply of water. A prehearing conference on this matter was held on April 5, 2023, pursuant to a notice of adjudicative proceeding issued on February 13, 2023.

1. Corrections to Petition Filing

During the prehearing conference, PWW noted a number of corrections required to be made to certain details contained in its petition, pre-filed testimony, and proposed special contract. Those corrections were filed with the Commission on April 5, 2023.

2. Procedural Schedule

We note that a procedural schedule proposed by the parties for the remainder of this proceeding was approved by the Commission on February 13, 2023.

3. Motion for Confidential Treatment

Also noted at the prehearing conference was a pending motion for confidential treatment regarding the Cost-of-Service Study (COSS) included with PWW's initial petition filing. PWW asserted in its motion that information pertaining to its consultant's proprietary formulae used to develop the COSS constitutes confidential, commercial, or financial information under RSA 91-A:5, IV. The NH Department of

Energy stated that it does not object to the motion, and no objections were separately filed in the record. The Commission has reviewed the COSS documents and grants the motion for the following reasons.

The Commission has routinely protected as confidential similar proprietary business models and software formulae used in support of utility filings in the past. *See, e.g., Pennichuck Water Works, Inc.*, Order No. 26,727 (November 18, 2022); and *Pennichuck Water Works, Inc.*, Order No. 26,711 (October 24, 2022). RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010)). Under the balancing test established by the New Hampshire Supreme Court, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. The Commission then balances those competing interests and decides whether disclosure is appropriate. When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *See e.g.*, Order No. 26,727 at 3 (citations omitted).

The Commission has determined that the information contained in the COSS filed in this docket constitutes confidential and sensitive commercial or financial under RSA 91-A:5,IV, and that PWW has a privacy interest in protecting the proprietary software of its consultant, the disclosure of which could pose legitimate financial harm or privacy risk to PWW, including the retention of experts in aid of

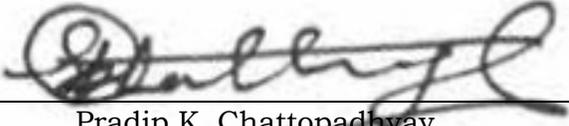
future regulatory filings. We therefore conclude that the interest in nondisclosure of the information identified in PWW's Motion outweighs the public's interest in its disclosure.

Accordingly, we grant PWW's Motion pursuant to Puc 203.08(a). Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s motion for confidential treatment and a protective order for certain proprietary software information submitted in Docket No. DW 22-085 is **GRANTED**, as set forth herein, above.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April 2023.



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 22-085

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